

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION IV

CA CR 06-1076

June 6, 2007

MICKEY KLEIN

APPELLANT

APPEAL FROM THE CIRCUIT COURT OF
BOONE COUNTY
[NO. CR2005-293-3]

V.

HONORABLE JOHNNY RAY PUTMAN,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Mickey Klein was found guilty in a jury trial of passing a hot check, a violation of Ark. Code Ann. § 5-37-302 (Repl. 2006), for which he was sentenced to ten years in prison. After hearing the evidence presented at the jury trial, the trial court also revoked appellant's probation on a previous hot-check conviction and sentenced him to five years in prison. The trial court ordered the sentences to be served concurrently.

In this appeal, appellant contends that the trial court lacked territorial jurisdiction to try him on the present hot-check charge and that his sentence for this conviction must be reversed because the record does not reflect a unanimous verdict by all twelve members of the jury. Appellant also contends that the probation revocation cannot stand because the terms and conditions of his probation were not introduced into evidence. We find no error in the proceedings and affirm.

On June 7, 2005, appellant wrote a check in the amount of \$1,169.32 to the Southern Oaks Inn in Branson, Missouri, in payment for a ten-day stay at the hotel. The check was drawn on appellant's business account at Arvest Bank in Harrison, Arkansas, but there were insufficient funds in the account to cover payment of the check. The present charge was based on this alleged violation of the Arkansas Hot Check Law. The petition to revoke was also based on this charge in addition to allegations that appellant left the State without permission and that he failed to pay probation fees.

Appellant first argues that the State of Arkansas did not have jurisdiction because his wrongful conduct took place in the State of Missouri. We disagree.

Territorial jurisdiction is among the requirements that must be proven beyond a reasonable doubt by the State in a criminal prosecution. Ark. Code Ann. § 5-1-111(a)(2) (Repl. 2006). It is presumed that an offense charged was committed within the jurisdiction of the court in which the charge is filed. *Baggett v. State*, 15 Ark. App. 113, 690 S.W.2d 362 (1985). The State is not required to prove jurisdiction unless evidence is admitted that affirmatively shows that the court lacks jurisdiction. *Findley v. State*, 307 Ark. 53, 818 S.W.2d 242 (1991); Ark. Code Ann. § 5-1-111(b). When reviewing the evidence on a jurisdictional question, we need only determine whether there is substantial evidence to support the finding of jurisdiction. *Ridling v. State*, 360 Ark. 424, 203 S.W.3d 63 (2005); *Graham v. State*, 34 Ark. App. 126, 806 S.W.2d 32 (1991).

A person may be convicted under a law of this State for an offense committed by his own conduct for which he is legally accountable if either the conduct or a result that is an element of the offense occurs within this State. *Powell v. State*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 17, 2007); Ark. Code Ann. § 5-1-104(a)(1) (Repl. 2005). Arkansas Code Annotated section 5-37-302 (Repl. 2006), our hot-check law, provides in pertinent part that it is unlawful for any person:

(1) To procure any article or thing of value or to ... make payment of

any taxes, licenses, or fees, or any fine or court costs, or for any other purpose to make or draw or utter or deliver, with intent to defraud, any check ... for the payment of money upon any *in-state* or out-of-state bank ... knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in, or on deposit with, such bank ... for the payment of such check.

(Emphasis supplied). Considering the statute then in effect, our supreme court has held that our territorial jurisdiction included checks drawn on Arkansas banks. *Cousins v. State*, 202 Ark. 500, 151 S.W.2d 658 (1941). Although the statute has undergone revision since the decision in *Cousins*, we see nothing in the present version of the statute that would lead to a different conclusion. Indeed, the present statute specifically speaks of checks drawn on in-state banks. That jurisdiction lies in Arkansas is also bolstered by Ark. Code Ann. § 5-37-306 (Repl. 2006), which provides:

(B) It is expressly intended in this section for the drawee, or for a third party holder in due course of a check, draft, or order, payment of which is refused by the drawee, to have the right to initiate and maintain the prosecution of a criminal charge against the maker of the check, draft, or order, whether or not the original payee consents to the action.

In sum, we hold that Arkansas had territorial jurisdiction over this matter by virtue of the check being drawn on an Arkansas bank.

Appellant's second argument is that we must reverse his sentence because the record does not show that the jury reached a unanimous decision. The record reflects that, once the jury reached its verdict fixing appellant's sentence at ten years and a \$5,000 fine, appellant asked for the jury to be polled. The court granted that request, and appellant's counsel proceeded to poll the jury. However, appellant's counsel only polled ten of the twelve jurors, and appellant now argues on appeal that the jury reached its verdict by lot because of the possibility that the sentencing decision was not the true verdict of each juror. Appellant's argument is misplaced. A less than unanimous decision on sentencing does not constitute a verdict by lot. *Ward v. State*, 20 Ark. App. 172, 726 S.W.2d 289 (1987). Moreover,

if there were any error, appellant invited it because it was he who failed to poll all of the jurors. One who is responsible for error cannot be heard to complain for that which he is responsible. *Ferguson v. State*, 90 Ark. App. 119, 204 S.W.3d 113 (2005).

Appellant's final argument on appeal concerns the revocation of his probation. He contends, for the first time on appeal, that there is no sufficient evidence to support the revocation decision because the State failed to prove that the terms and conditions of his probation were ever provided to him. Appellant maintains that he may raise this point on appeal without having raised it below because it is a challenge to the sufficiency of the evidence, which is an issue that need not be preserved in a revocation proceeding. *See Barbee v. State*, 346 Ark. 185, 56 S.W.3d 370 (2001). We rejected this same argument in *Nelson v. State*, 84 Ark. App. 373, 141 S.W.3d 900 (2004), where we held that a complaint about not being provided the written terms and conditions of probation was not a sufficiency-of-the-evidence issue that could be raised for the first time on appeal. Although appellant intimates that we should overrule *Nelson v. State, id.*, we stand by our decision.

Affirmed.

PITTMAN, C.J., and ROBBINS, J., agree.